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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% ***Reserved on: 29.07.2022***
Pronounced on: 03.08.2022

\+ **CRL.REV. 351/2022**

SULEMAN ..... Petitioner

Through: Mr. Nitin Bansal and Mr. Kundan Kumar, Advocates

versus

THE STATE (NCT OF DELHI) ..... Respondents

Through: Mr. Naresh Kumar Chahar, APP for State with ASI Rajveer, P.S.Narela Industrial Area

CORAM:
HON'BLE MS. JUSTICE SWARANA KANTA SHARMA

JUDGMENT

SWARANA KANTA SHARMA, J.

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1. The present Revision Petition has been filed, to set aside the order dated 05.05.2022, passed by the Learned Trial Court, North District, Rohini Courts, Delhi, wherein Default Bail of the Petitioner, under Section 167(2) Cr.P.C. was dismissed by the learned Trial Court.

Facts of the Case

2. The brief facts leading to the present petition are as under:

a) The Petitioner is in custody in case FIR no. 96/2021 under Sections 21 and 29 of the Narcotics Drugs and Psychotropic Substances Act, 1985 (hereinafter "NDPS Act") registered at P.S. Narela Industrial Area. On completion of the investigation, the charge sheet was filed on 03.03.2021 without the Forensic Science Laboratory (FSL) report. The charge sheet already filed mentioned that the supplementary charge sheet would be filed on the receipt of the report from forensic laboratory. The Petitioner was arrested on 04.03.2021, wherein he was found in possession of 300 gms of Heroine and 06 gms of heroine was recovered from the co-accused.

b) The Petitioner filed an application for bail in default under Section 167(2) of the Cr.P.C. before the learned Trial Court, claiming that the complete charge sheet was not filed within the stipulated time frame under Section 36A (4) of the NDPS Act. The learned Trial Court observed that the accused would not be entitled to Default Bail as the charge sheet has been filed even though the FSL Report is not filed. In furtherance, it was observed by the learned Trial Court that the quantity recovered from the Petition would fall under the bar of commercial quantity. Thus, the onus would be upon the Petitioner to satisfy the learned Trial Court. The observations made read as under:-

"*…The plea of default bail as the charge-sheet has been admittedly filed within a period of 180 days of the remand, but the same is without FSL result of the seized contraband. The said issue is already settled by Hon'ble Delhi High Court in case titled Krishan Lal V. State, 39(1989) DLT 392 and MohdArbaz vs State Cr Rev no. 1219/2019 dated 03.11.2020. The said issue though is now pending qua NDPS Act cases before the Hon'ble Supreme Court and therefore, till that time, the proposition of law as laid by Hon'ble Delhi High Court in Krishan Lal (supra) case holds field.*

The amount of quantity recovered from the accused/applicant falls under the category of commercial quantity and bar under 37 of the NDPS Act is also applicable. Therefore, the onus is upon the applicant to satisfy the twin conditions imposed as mandated in judgment viz; Union of India through NCB Lucknow V. Nawaz Khan, Crl. Appeal No. 1043/2021.

The judgments relied upon by Ld. Counsel for the accused/applicant are not applicable to the present case being distinguishable on facts. In view of the above facts and circumstances of the case, I am of the considered view that

no ground is made out for grant of bail to accused/applicant. Therefore, the application moved on behalf of the accused/applicant stands dismissed…"

Submissions of Learned Counsels

3. It is stated by the learned Counsel for the petitioner that the charge sheet is incomplete without FSL Report, since the IO does not know whether the substance recovered is actually a banned substance under Sections 21 and 29 of the NDPS Act.

4. Ld. Counsel for the APP for State states that the question of whether the charge sheet is incomplete without FSL Report or not, is yet to be decided by the Hon'ble Supreme Court and therefore the reliance should be placed on the law presently laid down by the Division Bench of this Court in ***Kishan Lal vs State*** **1989** ***SCC OnLine Del*** **348** and the Coordinate Bench of this Court in ***Babu vs The State (Govt. Of NCT of Delhi)*** **BAIL APPLN. 2075/2020** and ***Mohd. Arbaz vs State of NCT of Delhi*** **CRL. REV. P. 1219/2019.** The cases above mentioned have held that the FSL Report shall not form part of the charge sheet and hence, the plea for grant of bail in default was dismissed.

Default Bail under Section 167

(i) Objective

5. The procedure for application of Default bail finds its roots in Section 167(2) of the Cr.P.C. It is imperative to understand the objective and relevance of the provision of Section 167 for adjudication of the issue in hand. It is trite law that Default Bail under

Section 167 can only be availed before the filing of the charge sheet. The period for the calculation of the number of days of detention would commence from the date of remand of the accused and not from the date of arrest. ***(reference from Ravi Prakash Singh vs State of Bihar,* (2015) 8 *SCC* 340*).*** The period could be perused from the table below:-

Custody	Maximum Number of Days
Police Custody	15 days
Judicial Custody (Where an offence is punishable less than 10 years)	60 days
Judicial Custody (Where an offence is punishable more than 10 years)	90 days
Section 36A (4) of NDPS	180 days

6. It has been repeatedly emphasized by various courts that the right to seek default bail is an indefeasible right provided to the accused. The object of the Default Bail is inherently linked to Article 21 of the Constitution of India, laying emphasis on safeguarding the life and personal liberty of the accused against arbitrary detention. Section 167 states: -

"...167. Procedure when investigation cannot be completed in twenty-four hours.—

(1) Whenever any person is arrested and detained in custody, and it appears that the investigation cannot be completed within the period of twenty-four hours fixed by

section 57, and there are grounds for believing that the accusation or information is wellfounded, the officer in charge of the police station or the police officer making the investigation, if he is not below the rank of sub-inspector, shall forthwith transmit to the nearest Judicial Magistrate a copy of the entries in the diary hereinafter prescribed relating to the case, and shall at the same time forward the accused to such Magistrate.

(2) The Magistrate to whom an accused person is forwarded under this section may, whether he has or has not jurisdiction to try the case, from time to time, authorise the detention of the accused in such custody as such Magistrate thinks fit, for a term not exceeding fifteen days in the whole; and if he has no jurisdiction to try the case or commit it for trial, and considers further detention unnecessary, he may order the accused to be forwarded to a Magistrate having such jurisdiction: Provided that—

1 [(a) the Magistrate may authorise the detention of the accused person, otherwise than in custody of the police, beyond the period of fifteen days, if he is satisfied that adequate grounds exist for doing so, but no Magistrate shall authorise the detention of the accused person in custody under this paragraph for a total period exceeding—

(i) ninety days, where the investigation relates to an offence punishable with death, imprisonment for life or imprisonment for a term of not less than ten years;

(ii) sixty days, where the investigation relates to any other offence, and, on the expiry of the said period of ninety days, or sixty days, as the case may be, the accused person shall be released on bail if he is prepared to and does furnish bail, and every person released on bail under this sub-section shall be deemed to be so released under the provisions of Chapter XXXIII for the purposes of that Chapter;]

2 [(b) no Magistrate shall authorise detention of the accused in custody of the police under

this section unless the accused is produced before him in person for the first time and subsequently every time till the accused remains in the custody of the police, but the Magistrate may extend further detention in judicial custody on production of the accused either in person or through the medium of electronic video linkage;]

(c) no Magistrate of the second class, not specially empowered in this behalf by the High Court, shall authorise detention in the custody of the police. 3

[Explanation I.—For the avoidance of doubts, it is hereby declared that, notwithstanding the expiry of the period specified in paragraph (a), the accused shall be detained in custody so long as he does not furnish bail.]

4 [Explanation II.—If any question arises whether an accused person was produced before the Magistrate as required under clause (b), the production of the accused person may be proved by his signature on the order authorising detention or by the order certified by the Magistrate as to production of the accused person through the medium of electronic video linkage, as the case may be.]

1 [Provided further that in case of a woman under eighteen years of age, the detention shall be authorised to be in the custody of a remand home or recognised social institution.]

2 [(2A) Notwithstanding anything contained in sub-section (1) or sub-section (2), the officer in charge of the police station or the police officer making the investigation, if he is not below the rank of a sub-inspector, may, where a Judicial Magistrate is not available, transmit to the nearest Executive Magistrate, on whom the powers of a Judicial Magistrate or Metropolitan Magistrate have been conferred, a copy of the entry in the diary hereinafter prescribed relating to the case, and shall, at the same time, forward the accused to such

Executive Magistrate, and thereupon such Executive Magistrate, may, for reasons to be recorded in writing, authorise the detention of the accused person in such custody as he may think fit for a term not exceeding seven days in the aggregate; and, on the expiry of the period of detention so authorised, the accused person shall be released on bail except where an order for further detention of the accused person has been made by a Magistrate competent to make such order; and, where no order for such further detention is made, the period during which the accused person was detained in custody under the orders made by an Executive Magistrate under this sub-section, shall be taken into account in computing the period specified in paragraph (a) of the proviso to sub-section (2): Provided that before the expiry of the period aforesaid, the Executive Magistrate shall transmit to the nearest Judicial Magistrate the records of the case together with a copy of the entries in the diary relating to the case which was transmitted to him by the officer in charge of the police station or the police officer making the investigation, as the case may be.]

(3) A Magistrate authorising under this section detention in the custody of the police shall record his reasons for so doing.

(4) Any Magistrate other than the Chief Judicial Magistrate making such order shall forward a copy of his order, with his reasons for making it, to the Chief Judicial Magistrate.

(5) If in any case triable by a Magistrate as a summons-case, the investigation is not concluded within a period of six months from the date on which the accused was arrested, the Magistrate shall make an order stopping further investigation into the offence unless the officer making the investigation satisfies the Magistrate that for special reasons and in the interests of justice the continuation of the investigation beyond the period of six months is necessary.

> *(6) Where any order stopping further investigation into an offence has been made under sub-section (5), the Sessions Judge may, if he is satisfied, on an application made to him or otherwise, that further investigation into the offence ought to be made, vacate the order made under sub-section (5) and direct further investigation to be made into the offence subject to such directions with regard to bail and other matters as he may specify…"*

(ii) Law

7. In ***Sanjay Dutt vs State through CBI, Bombay (II),*** **(1994) 5 *SCC* 410**, the Constitution Bench of the Hon'ble Supreme Court held that the indefeasible right of the accused to be released on bail for not filing the charge sheet within the statutory period is enforceable by the accused only till the filing of the challan. Further, if an accused does not avail Default Bail, they can always seek Regular Bail under Cr.P.C.. The observation reads as under :-

> *"48. We have no doubt that the common stance before us of the nature of indefeasible right of the accused to be released on bail by virtue of Section 20(4)(bb) is based on a correct reading of the principle indicated in that decision. The indefeasible right accruing to the accused in such a situation is enforceable only prior to the filing of the challan and it does not survive or remain enforceable on the challan being filed, if already not availed of. Once the challan has been filed, the question of grant of bail has to be considered and decided only with reference to the merits of the case under the provisions relating to grant of bail to an accused after the filing of the challan. The custody of the accused after the challan has been filed is not governed by Section 167 but different provisions of the Code of Criminal Procedure. If that right had accrued to the accused but it remained*

unenforced till the filing of the challan, then there is no question of its enforcement thereafter since it is extinguished the moment challan is filed because Section 167 CrPC ceases to apply. The Division Bench also indicated that if there be such an application of the accused for release on bail and also a prayer for extension of time to complete the investigation according to the proviso in Section 20(4)(bb), both of them should be considered together. It is obvious that no bail can be given even in such a case unless the prayer for extension of the period is rejected. In short, the grant of bail in such a situation is also subject to refusal of the prayer for extension of time, if such a prayer is made. If the accused applies for bail under this provision on expiry of the period of 180 days or the extended period, as the case may be, then he has to be released on bail forthwith. The accused, so released on bail may be arrested and committed to custody according to the provisions of the Code of Criminal Procedure. It is settled by Constitution Bench decisions that a petition seeking the writ of habeas corpus on the ground of absence of a valid order of remand or detention of the accused, has to be dismissed, if on the date of return of the rule, the custody or detention is on the basis of a valid order. (See Naranjan Singh Nathawan v. State of Punjab [1952 SCR 395 : AIR 1952 SC 106 : 1952 Cri LJ 656] ; Ram Narayan Singh v. State of Delhi [1953 SCR 652 : AIR 1953 SC 277 : 1953 Cri LJ 1113] and A.K. Gopalan v. Government of India [(1966) 2 SCR 427 : AIR 1966 SC 816 : 1966 Cri LJ 602] .)"

8. In a recent judgement of the Hon'ble Supreme Court, ***M. Ravindran vs The Intelligence Officer, Directorate of Revenue Intelligence*** **(2021) 2** ***SCC*** **485**, the Three-Judge Bench looked into the trajectory of Section 167(2) and the relation of the provision within the Constitutional parlance. The Hon'ble Supreme Court made the following observations: -

"... II. Section 167(2) and the Fundamental Right to Life and Personal Liberty

17. Before we proceed to expand upon the parameters of the right to default bail under Section 167(2) as interpreted by various decisions of this Court, we find it pertinent to note the observations made by this Court in Uday Mohanlal Acharya [Uday Mohanlal Acharya v. State of Maharashtra, (2001) 5 SCC 453 : 2001 SCC (Cri) 760] on the fundamental right to personal liberty of the person and the effect of deprivation of the same as follows: (SCC p. 472, para 13)

> *"13. ... Personal liberty is one of the cherished objects of the Indian Constitution and deprivation of the same can only be in accordance with law and in conformity with the provisions thereof, as stipulated under Article 21 of the Constitution. When the law provides that the Magistrate could authorise the detention of the accused in custody up to a maximum period as indicated in the proviso to sub-section (2) of Section 167, any further detention beyond the period without filing of a challan by the investigating agency would be a subterfuge and would not be in accordance with law and in conformity with the provisions of the Criminal Procedure Code, and as such, could be violative of Article 21 of the Constitution."*

17.1. Article 21 of the Constitution of India provides that "no person shall be deprived of his life or personal liberty except according to procedure established by law". It has been settled by a Constitution Bench of this Court in Maneka Gandhi v. Union of India [Maneka Gandhi v. Union of India, (1978) 1 SCC 248] , that such a procedure cannot be arbitrary, unfair or unreasonable. The history of the enactment of Section 167(2) CrPC and the safeguard of

"default bail" contained in the proviso thereto is intrinsically linked to Article 21 and is nothing but a legislative exposition of the constitutional safeguard that no person shall be detained except in accordance with rule of law.

17.2. Under Section 167 of the Code of Criminal Procedure, 1898 ("the 1898 Code") which was in force prior to the enactment of the CrPC, the maximum period for which an accused could be remanded to custody, either police or judicial, was 15 days. However, since it was often unworkable to conclude complicated investigations within 15 days, a practice arose wherein investigating officers would file "preliminary charge-sheets" after the expiry of the remand period. The State would then request the Magistrate to postpone commencement of the trial and authorise further remand of the accused under Section 344 of the 1898 Code till the time the investigation was completed and the final charge-sheet was filed. The Law Commission of India in Report No. 14 on Reforms of the Judicial Administration (Vol. II, 1948, pp. 758-760) pointed out that in many cases the accused were languishing for several months in custody without any final report being filed before the courts. It was also pointed out that there was conflict in judicial opinion as to whether the Magistrate was bound to release the accused if the police report was not filed within 15 days.

17.3. Hence the Law Commission in Report No. 14 recommended the need for an appropriate provision specifically providing for continued remand after the expiry of 15 days, in a manner that "while meeting the needs of a full and proper investigation in cases of serious crime, will still safeguard the liberty of the person of the individual". Further, that the legislature should prescribe a maximum time period beyond which no accused could be detained without filing of the police report before the Magistrate. It was pointed out that in England, even a person accused of

grave offences such as treason could not be indefinitely detained in prison till commencement of the trial.

17.4. The suggestion made in Report No. 14 was reiterated by the Law Commission in Report No. 41 on The Code of Criminal Procedure, 1898 (Vol. I, 1969, pp. 76-77). The Law Commission re-emphasised the need to guard against the misuse of Section 344 of the 1898 Code by filing "preliminary reports" for remanding the accused beyond the statutory period prescribed under Section 167. It was pointed out that this could lead to serious abuse wherein "the arrested person can in this manner be kept in custody indefinitely while the investigation can go on in a leisurely manner". Hence the Commission recommended fixing of a maximum time-limit of 60 days for remand. The Commission considered the reservation expressed earlier in Report No. 37 that such an extension may result in the 60-day period becoming a matter of routine. However, faith was expressed that proper supervision by the superior courts would help circumvent the same.

17.5. The suggestions made in Report No. 41 were taken note of and incorporated by the Central Government while drafting the Code of Criminal Procedure Bill in 1970. Ultimately, the 1898 Code was replaced by the present CrPC. The Statement of Objects and Reasons of the CrPC provides that the Government took the following important considerations into account while evaluating the recommendations of the Law Commission:

> *"3. The recommendations of the Commission were examined carefully by the Government, keeping in view, among others, the following basic considerations:*
>
> *(i) an accused person should get a fair trial in accordance with the accepted principles of natural justice;*

(ii) every effort should be made to avoid delay in investigation and trial which is harmful not only to the individuals involved but also to society; and

(iii) the procedure should not be complicated and should, to the utmost extent possible, ensure fair deal to the poorer sections of the community."

17.6. It was in this backdrop that Section 167(2) was enacted within the present day CrPC, providing for time-limits on the period of remand of the accused, proportionate to the seriousness of the offence committed, failing which the accused acquires the indefeasible right to bail. As is evident from the recommendations of the Law Commission mentioned supra, the intent of the legislature was to balance the need for sufficient time-limits to complete the investigation with the need to protect the civil liberties of the accused. Section 167(2) provides for a clear mandate that the investigative agency must collect the required evidence within the prescribed time period, failing which the accused can no longer be detained. This ensures that the investigating officers are compelled to act swiftly and efficiently without misusing the prospect of further remand. This also ensures that the court takes cognizance of the case without any undue delay from the date of giving information of the offence, so that society at large does not lose faith and develop cynicism towards the criminal justice system.

17.7. Therefore, as mentioned supra, Section 167(2) is integrally linked to the constitutional commitment under Article 21 promising protection of life and personal liberty against unlawful and arbitrary detention, and must be interpreted in a manner which serves this purpose. In this regard we find it useful to refer to the decision of the three-Judge Bench of this Court in Rakesh Kumar Paul v. State of

Assam [Rakesh Kumar Paul v. State of Assam, (2017) 15 SCC 67 : (2018) 1 SCC (Cri) 401] , which laid down certain seminal principles as to the interpretation of Section 167(2) CrPC though the questions of law involved were somewhat different from the present case. The questions before the three-Judge Bench in Rakesh Kumar Paul [Rakesh Kumar Paul v. State of Assam, (2017) 15 SCC 67 : (2018) 1 SCC (Cri) 401] were whether, firstly, the 90-day remand extension under Section 167(2)(a)(i) would be applicable in respect of offences where the maximum period of imprisonment was 10 years, though the minimum period was less than 10 years. Secondly, whether the application for bail filed by the accused could be construed as an application for default bail, even though the expiry of the statutory period under Section 167(2) had not been specifically pleaded as a ground for bail. The majority opinion held that the 90-day limit is only available in respect of offences where a minimum ten year' imprisonment period is stipulated, and that the oral arguments for default bail made by the counsel for the accused before the High Court would suffice in lieu of a written application. This was based on the reasoning that the court should not be too technical in matters of personal liberty. Madan B. Lokur, J. in his majority opinion, pertinently observed as follows: (SCC pp. 95-96 & 99, paras 29, 32 & 41)

> *"29. Notwithstanding this, the basic legislative intent of completing investigations within twenty-four hours and also within an otherwise time-bound period remains unchanged, even though that period has been extended over the years. This is an indication that in addition to giving adequate time to complete investigations, the legislature has also and always put a premium on personal liberty and has always felt that it would be unfair to an accused to remain in custody for a prolonged or indefinite period. It is for this reason and*

also to hold the investigating agency accountable that time-limits have been laid down by the legislature. ...

***

32. ... Such views and opinions over a prolonged period have prompted the legislature for more than a century to ensure expeditious conclusion of investigations so that an accused person is not unnecessarily deprived of his or her personal liberty by remaining in prolonged custody for an offence that he or she might not even have committed. In our opinion, the entire debate before us must also be looked at from the point of view of expeditious conclusion of investigations and from the angle of personal liberty and not from a purely dictionary or textual perspective as canvassed by the learned counsel for the State.

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41. We take this view keeping in mind that in matters of personal liberty and Article 21 of the Constitution, it is not always advisable to be formalistic or technical. The history of the personal liberty jurisprudence of this Court and other constitutional courts includes petitions for a writ of habeas corpus and for other writs being entertained even on the basis of a letter addressed to the Chief Justice or the Court."

(emphasis supplied)

Therefore, the courts cannot adopt a rigid or formalistic approach whilst considering any issue that touches upon the rights contained in Article 21.

17.8. We may also refer with benefit to the recent judgment of this Court in S. Kasi v. State [S. Kasi v. State, (2021) 12 SCC 1 : 2020 SCC OnLine SC 529] , wherein it was observed that the indefeasible right to default bail under Section 167(2) is an integral part of the right to personal liberty under Article 21, and the said right to bail cannot be suspended even during a pandemic situation as is prevailing currently. It was emphasised that the right of the accused to be set at liberty takes precedence over the right of the State to carry on the investigation and submit a charge-sheet.

17.9. Additionally, it is well-settled that in case of any ambiguity in the construction of a penal statute, the courts must favour the interpretation which leans towards protecting the rights of the accused, given the ubiquitous power disparity between the individual accused and the State machinery. This is applicable not only in the case of substantive penal statutes but also in the case of procedures providing for the curtailment of the liberty of the accused.

17.10. With respect to the CrPC particularly, the Statement of Objects and Reasons (supra) is an important aid of construction. Section 167(2) has to be interpreted keeping in mind the threefold objectives expressed by the legislature, namely, ensuring a fair trial, expeditious investigation and trial, and setting down a rationalised procedure that protects the interests of indigent sections of society. These objects are nothing but subsets of the overarching fundamental right guaranteed under Article 21.

17.11. Hence, it is from the perspective of upholding the fundamental right to life and personal liberty under Article 21 that we shall clarify and reconcile the various judicial interpretations of Section 167(2) for the purpose of resolving the dilemma that has arisen in the present case."

9. In the present case, the charge sheet was filed on 03.03.2021, however, without the FSL report. The charge sheet was thus filed

within the limitation period prescribed under law. The question in dispute narrows down as to whether the FSL report forms part of the charge sheet and is an essential prerequisite to file with the charge sheet.

FSL Report not part of the Charge Sheet

10. In ***Kishan Lal vs State*** **1989** ***SCC OnLine Del*** **348**, a Division Bench of this Court observed that a police report does not need to enclose an expert opinion of Government Scientific expert with the charge sheet and thus, no bail was granted under Section 167(2) as the charge sheet was already filed within stipulated time. The observation reads as follows:-

> "*… 5. The question raised by the petitioners in a nut shell is whether the investigation of a case under the NDPS Act can be said to be complete in the absence of the report of the Scientific Officer and Chemical Examiner? The contention is that where the accused person is allegedly found in possession of or transporting a prohibited drug or substance, mainly two facts have to be established by the prosecution viz., (1) that of recovery of the commodity or substance and (2) that the possession of the said recovered material is illegal under the provisions of the NDPS Act. It is submitted that the Investigating Officer would be unable to give his opinion regarding the second aspect till he obtains the report of the expert and, therefore, the report submitted by the Investigating Officer even if purported to be under Section 173(2) of the Code, must be held, to be based on in complete investigation.*
>
> *6. The learned Single Judge in his reference order has noticed that the reported cases in which this question has been settled related to offences under the Penal Code, 1860. It was urged before him that the principles enunciated in*

those cases are not applicable to cases involving an offence under the NDPS Act or the old Opium Act or the Excise Act. To appreciate the contentions raised in these petitions, we have to notice the case law to some extent to highlight the settled principles.

7. It has been held by the Supreme Court that although the police are not permitted to send an incomplete report under Section 173(2) of the Code, yet the investigation except for the report of an expert like the Serologist or Scientific Officer and Chemical Examiner is complete and, therefore, the Magistrate is empowered to take cognizance of the offence on a police report which does not include the expert's opinion. In Tara Singh v. State, AIR 1951 SC 441, (1) the Polka had infact filed a report dated the 2nd October, 1949 terming it as an "incomplete challan", and on the 5th October they filed a report which they called a "complete challan". Thereafter on the 19th October they filed yet another report which was termed as "supplementary challan". The objection taken at the trial was that the Magistrate had no power to take cognizance of the case on 3rd October when the incomplete challan dated 2nd October, 1949 was placed before him. It was contended that the Police are not permitted to file an incomplete report under Section 173(2) of the Code."

11. Further in view of the decision of *Kishan Lal vs State (supra)*, a Coordinate Bench of this Court in a recent judgement of ***Babu vs The State (Govt. Of NCT of Delhi*) BAIL APPLN. 2075/2020** dated 25.09.2020, observed as under: -

"*…18. Though this Court is of the view that the decision of the Division Bench of the Punjab and Haryana High Court is an appropriate opinion in relation to cognizance of an offence under NDPS Act without the FSL report being an illegality, however, bound by the Division Bench decision of this Court, judicial discipline mandates this Court to follow the same. Consequently, in view of the decision of the*

Division Bench of this Court in Kishan Lal vs. State (supra), it is held that the petitioner is not entitled to grant of bail under Section 167(2) CrPC for non-filing of the FSL report along with the charge sheet…"

12. A similar view was followed by the Coordinate Bench of this Court in ***Mohd. Arbaz vs State of NCT of Delhi*** **CRL. REV. P. 1219/2019** on 03.11.2020, wherein it was observed that the accused should not be entitled to bail in default as the charge sheet was already filed. The Court held that the report shall not form part of the charge sheet and hence, the bail under Section 167(2) was rejected. An appeal against the said judgement is pending before the Hon'ble Supreme Court in ***Mohd. Arbaz vs State of NCT of Delhi*** **SLP(Crl.) Nos. 8164-8166/2021**. The observation of the Hon'ble High Court reads as under: -

"…24. This Court concurs with the view expressed by the Coordinate Bench of this Court in Babu (supra). Thus, the view expressed by the Division Bench of Punjab and Haryana High Court in Ajit Singh @Jeeta(supra) and the view expressed by the Bombay High Court in Sunil VasantraoPhulbande(supra),convinced this Court that the view of the Division Bench in Kishan Lal (supra) is binding.
25. In view of the above, the petitioners' contention that the report submitted on 27.05.2019 could not be construed as a report under Section 173(2) of the Cr.PC must be rejected. The first question is, thus, answered in the negative…"

13. At present, the settled law persists in the view that non filing of FSL Report with the charge sheet does not fall within the realms of Section 173(2) of the Cr.P.C so as to consider it as "incomplete report". In the present case although FSL Report has not been filed, however, the charge sheet was already filed on 03.03.2021 within the

time period as per law. Further, the amount of quantity recovered from the accused is of commercial nature baring the accused from bail under Section 37 of the NDPS Act.

Conclusion

14. In view of the above, the court finds no infirmity in the impugned order dated 05.05.2022. The application moved by the petitioners seeking bail in default under the provisions of Section 167(2) of the Cr.P.C. is dismissed.

SWARANA KANTA SHARMA, J.

AUGUST 3, 2022/zp